IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.447 OF 2006

IN

APPEAL FROM ORDER NO.985 OF 2005

IN

NOTICE OF MOTION NO.4776 OF 2003

IN

S.C.SUIT NO.5871 OF 2003

Kalpesh M.Patel & Ors. ...Applicants

Versus

Shivram Swaroop Raval ...Respondents

.....

Mr.Ajay Mishra for Applicants.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 1, 2006.

P.C.

1. Perused the application.

2. It is not possible to accept the explanation offered by the Applicants. No

sufficient cause has been made out as to what prevented the Applicants to take steps to amend the original proceedings in terms of order dated 12th December 2005. In fact, conditional order was passed by this Court on January 17, 2006. Though conditional order was not complied with, inspite of that, indulgence was shown by this Court on April 18, 2006 by recalling the conditional order and restoring the Appeal.

3. This Application, however, is filed only on 15th May 2006. No sufficient cause has been made out as to what prevented the Applicants from carrying out necessary amendment to add Smt.Deepti Jignesh Kandole as party-Respondent in terms of the order dated 12th December 2005. Obviously, the lapse is on the part of the Advocate who is handling the matter.

4. As the litigant should not suffer for the mistake of the Advocate, this Application is allowed on two conditions. Firstly, the Advocate on record shall personally pay cost quantified at Rs.3,000/- (Rupees Three Thousand) to the High

Court Legal Services Committee on or before 4th August 2006, failing which, Office to treat this Application as having been dismissed for non-prosecution, without further reference to the Court. Secondly, the Applicant shall carry out necessary amendment on or before 8th August 2006, failing which, Application to stand dismissed for non-prosecution without further reference to the Court.

5. If amendment is carried out in time, post the main matter on 11th August 2006.

A.M.KHANWILKAR, J.